Supreme Court, U.S.
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No. 94-1501

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

WILLIAMSON COUNTY, TENNESSEE,

*Petitioner,*

*v.*

BONDHOLDER COMMITTEE,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

## RESPONDENT'S BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED

1. Whether the Sixth Circuit correctly held that postpetition attorneys' fees, costs and penalties on an oversecured real property tax claim are not allowable under 11 U.S.C. §506(b).

2. Whether the disallowance under 11 U.S.C. §506(b) of postpetition attorneys' fees, costs and penalties on the County's real property tax claim is permissible under the Tenth Amendment to the United States Constitution.

## PARTIES

Petitioner Williamson County, Tennessee is a county organized under the laws of the State of Tennessee.

Respondent Bondholder Committee is the official bondholder committee appointed in the Chapter 11 case of Brentwood Outpatient, Ltd.

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## RESPONDENT'S BRIEF IN OPPOSITION

TO THE HONORABLE SUPREME COURT:

Respondent, Bondholder Committee, respectfully requests that this Court deny the Petition for a Writ of Certiorari submitted by Williamson County, Tennessee.

## OPINIONS BELOW

The Bondholder Committee filed an objection to the allowance of postpetition attorneys' fees, costs and penalties asserted by Williamson County in the Chapter 11

case of Brentwood Outpatient, Ltd. The bankruptcy court for the Middle District of Tennessee in its opinion published at 134 Bankr. 267 allowed Williamson County the accrual of postpetition penalties but disallowed the accrual of postpetition attorneys' fees and costs. The District Court for the Middle District of Tennessee affirmed the bankruptcy court in a decision published at 152 Bankr. 727. The Sixth Circuit affirmed that portion of the District court's opinion disallowing the accrual of postpetition attorneys' fees and costs, and reversed that portion of the district court's opinion allowing postpetition penalties. The opinion of the Sixth Circuit is reported at 43 F.3d 256.

## STATEMENT OF THE CASE

This appeal arises from the objection of the Official Bondholder Committee to a portion of the claim of Williamson County for 1989 real property taxes. The Bondholder Committee was the proponent of a Plan of Reorganization which was confirmed in the Chapter 11 case of the Brentwood Outpatient, Ltd. and made effective on June 1, 1991. The Plan provided for the payment of 100% of all allowed property taxes on the Effective Date of the Plan and the transfer of the real property to a Co-Trustee under a certain Trust Indenture free and clear of the lien of Williamson County for the 1989 property taxes.

Williamson County had asserted a claim in the Chapter 11 case of Brentwood Outpatient, Ltd. in the amount of $41,543.60 as of May 31, 1991 for 1989 real property taxes. Of this amount, Williamson County asserted $29,961.12 was payable for the 1989 base tax, $4,494.17 was payable for interest accruing at the statutory rate of

12% per annum since the due date, $2,247.08 was payable for penalties accruing at the statutory rate of 6% per annum since the due date, $2,996.11 was payable for attorneys' fees incurred since the due date, and $1,845.12 was payable for court costs incured since the due date. The value of the real property exceeded the amount of the taxes owing to Williamson County, and, thus, the allowance of postpetition accruals on the tax claim was determinable under 11 U.S.C. §506(b). After confirmation of the Plan, the Bondholder Committee paid the amount owing for the 1989 base tax plus prepetition and postpetition interest, but objected to the payment of postpetition penalties, attorneys' fees, and court costs which had accrued since the due date in February 1990. No fees, costs or penalties had accrued prepetition.

The bankruptcy court held that the $4,841.23 owing for attorneys' fees and court costs were not allowable under §506(b), but that the penalty in the amount of $2,247.08 was allowable. The district court affirmed the bankruptcy court's decision and the Sixth Circuit affirmed the disallowances of the fees and costs but reversed as to the allowance of the penalties.

## SUMMARY OF ARGUMENT

The County's petition for a writ of certiorari fails to show any reason why this Court should review the decision below. The Sixth Circuit's opinion is entirely consistent with this Court's prior plain meaning interpretation of 11 U.S.C. §506(b) in *Ron Pair Enterprises*. Far from presenting a conflict with any decisions of other circuit courts, the decision below is in harmony with those decisions and there is no need for this Court's review. Fur-

ther, the Sixth Circuit's decision is consistent with the analysis of Tenth Amendment issues used by this Court in *Garcia* and later cases.

This case does not present a question of federal law which should be settled by this Court. The impairment of the County's taxing authority under §506(b) has a minor impact on the County's power to tax since it affects only the allowance of postpetition fees, costs and penalties that are added to the County's base tax. This treatment is the same as the treatment of all other nonconsensual claims in a bankruptcy case and promotes the policies generally recognized under the Bankruptcy Code. Further, the treatment of oversecured, nonconsensual claims under §506(b) is actually an enhancement of the treatment of tax claims that existed prior to the enactment of the Reform Act of 1978.

## REASONS FOR DENYING THE WRIT

### I.

### THE SIXTH CIRCUIT'S APPLICATION OF §506(b) IS ENTIRELY CONSISTENT WITH THE PRIOR HOLDINGS OF THIS COURT AND OTHER CIRCUIT COURTS.

This Court has previously held that the plain meaning of 11 U.S.C. §506(b) allows postpetition interest on an oversecured, nonconsensual claim, such as a tax claim. *United States v. Ron Pair Enterprises*, 489 U.S. 235, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989). In that case this Court stated "in the absence of an agreement, postpetition interest is the only added recovery available. 489 U.S. at 241.

While the holding in *Ron Pair Enterprises* only specifically applied to the allowance of postpetition interest,

the allowance of postpetition attorneys' fees, costs and penalties has been definitively addressed by the Second and Fifth Circuits. Those courts concluded, consistent with *Ron Pair Enterprises,* that the plain meaning of §506(b) does not allow the postpetition accrual of those claims unless there exists a written agreement between the debtor and the creditor specifically allowing each claim. *In re Pointer*, 952 F.2d 82, 89 (5th Cir.), *cert. denied*, 112 S.Ct 3035, 120 L.Ed.2d 904 (1992); *In re Parr Meadows Racing Association, Inc.*, 880 F.2d 1540, 1549 (2d Cir. 1989), *cert. denied*, 493 U.S. 1058, 110 S.Ct. 869, 107 L.Ed.2d 953 (1990); *see also Landmark Financial Services v. Hall*, 918 F.2d 1150, 1154 (4th Cir. 1990) (agreement did not require payment of interest on mortgage arrearages); *In re Lapiana*, 909 F.2d 221, 222 (7th Cir. 1990) (notwithstanding §506(b), in appropriate circumstances the bankruptcy court can abate an award of postpetition interest on an oversecured IRS claim). Now, in the instant case, the Sixth Circuit joins the Second and Fifth Circuits in its construction and application of §506(b). Pet. App. 1a. Thus, there is no basis for this Court's review.

Contrary to the County's argument in its Petition that the circuit courts' extension of *Ron Pair Enterprises* was not intended by the Court, the circuit courts faithfully have applied the plain meaning interpretation adopted by this Court in *Ron Pair Enterprises*. Instead, the County is asking this Court to create an unwarranted and, heretofore, unrecognized exception to §506(b) in the context of local real property tax liens. The County's argument on this issue ultimately evolves into a constitutional argument that ignores the statutory construction issue.

## II.

## THE TENTH AMENDMENT ISSUE RAISED BY PETITIONER IS A WELL-SETTLED PRINCIPLE OF CONSTITUTIONAL LAW.

The constitutional challenge raised by the County to the Bankruptcy Code is virtually the same challenge that has been raised and rejected in numerous cases. It is not disputed that this Court has held that the power of Congress to establish bankruptcy laws is not unfettered. *See Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 589, 55 S.Ct. 854, 863 (1935) (Congress's power to establish bankruptcy law is subject to the prohibitions of the Fifth Amendment). However, every constitutional challenge to the power of Congress to enact any aspect of the current Bankruptcy Code as violative of states' rights under the Tenth Amendment has been uniformly rejected. *See In re Crook*, 966 F.2d 539, 544 (10th Cir. 1992) (reduction of state's claim in Chapter 12 case did not violate Tenth Amendment); *In re Hirsh-Franklin Enterprises, Inc.*, 63 Bankr. 864 (Bkrtcy. M.D. Ga. 1986) (subordination of city, county and state tax liens pursuant to §726 did not violate the Tenth Amendment even though it interfered with the state's ability to fulfill its governmental responsibilities); *In re Cropper Co., Inc.*, 63 Bankr. 874 (Bkrtcy. M.D. Ga. 1986) (subordination of local tax liens precluding payment of tax claim did not violate Tenth Amendment); *In re Kamstra*, 51 Bankr. 826 (Bkrtcy. W.D. Mich. 1985) (tax claim of city and county subordinated to administrative expenses under §724 was constitutional); *In re Stroud Wholesale, Inc.*, 37 Bankr. 735, 739 (Bkrtcy. E.D.N.C. 1984) (§724(b) subordination of nonavoidable liens did not violate the Tenth Amendment although it adversely affected the collection of local and state taxes); *In re Nashville White Trucks, Inc.*, 22 Bankr. 578, 583 (Bkrtcy. M.D. Tenn. 1982)

(automatic stay upheld as not violating the Tenth Amendment even though the stay affected the state's ability to assert and collect taxes).

Constitutional challenges under the prior Bankruptcy Act were also repeatedly and uniformly rejected. *See New York v. Irving Trust Co.*, 288 U.S. 329, 331-333, 53 S.Ct. 389, 390-391, 77 L.Ed. 815 (1933) (requirement that state law tax claim must be filed before bar date set by bankruptcy court to participate in distribution held constitutional); *Perez v. Campbell*, 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233 (1971) (Arizona statute purporting to avoid bankruptcy discharge of certain state tort liability was in direct conflict with the Bankruptcy Act and unconstitutional as a violation of the supremacy clause); *Gardner v. New Jersey*, 329 U.S. 565, 575-579, 67 S.Ct. 467, 472-474, 91 L.Ed. 504 (1947) (bankruptcy court may determine the validity and amount of a tax lien); *Kalb v. Feuerstein*, 308 U.S. 433, 60 S.Ct. 343, 84 L.Ed. 370 (1940) (bankruptcy law nullifies state law jurisprudence over foreclosures); *Van Huffel v. Harkelrode*, 284 U.S. 225, 228-229, 52 S.Ct. 115, 116-117, 76 L.Ed. 256 (1931) (state tax liens are subject to the federal bankruptcy power to sell property free from liens); *International Shoe Co. v. Pinkus*, 278 U.S. 261, 49 S.Ct. 108, 73 L.Ed. 318 (1929) (federal bankruptcy law supersedes conflicting state receivership law); *Springfield v. Hotel Charles Co.*, 84 F.2d 589, 591 (1st Cir. 1936) (bankruptcy court is authorized to reexamine state tax claim and disallow amounts in excess of that justly due).

This case concerns the authority of Congress to subject state governments to generally applicable laws. The appropriate analysis in interpreting the Tenth Amendment in such cases was articulated by this Court in *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S.

528, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985). As recognized by the lower courts in this case, the correct analysis to be applied is as follows:

> a court may impose a substantive restraint on Congress's establishment of bankruptcy laws, such as holding that extinguishment of tax lien costs and fees under Section 506(b) is unconstitutional, only if the court were satisfied that the interests of local and state government in their tax revenues inherently could not have been represented in Congress or "the national political process" and that such a holding compensated for the process[.]

Pet. App. 17a.

Following its decision in *Garcia*, this Court has consistently acknowledged that "[a]s the Federal Government's willingness to exercise power within the confines of the Constitution has grown, the authority of the States has correspondingly diminished to the extent that federal and state policies have conflicted." *New York. v. United States*, _____ U.S. ____, 112 S.Ct. 2408, 2419, 120 L.Ed.2d 120 (1992). The evolution of this principle is evident from past cases. *See South Carolina v Baker*, 485 U.S. 505, 108 S.Ct. 1355, 99 L.Ed.2d 592 (1988) (tax code provision denying federal income tax exemption for unregistered state bonds did not violate Tenth Amendment); *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985) (overruling *The National League of Cities*; state employers once again subject to Fair Labor Standards Act); *EEOC v. Wyoming*, 460 U.S. 226, 103 S.Ct. 1054, 75 L.Ed.2d 18 (1983) (extension of Age Discrimination in Employment Act to cover state and local governments did not violate the Tenth Amendment); *Transportation Union v. Long Island R. Co.*, 455 U.S. 678, 102

S.Ct. 1349, 71 L.Ed.2d 547 (1982) (applying the federal Railway Labor Act to a state owned railroad does not violate the Tenth Amendment); *The National League of Cities v. Usery*, 426 U.S. 833, 96 S.Ct. 2465, 49 L.Ed.2d 245 (1976) (overruling *Wirtz*; state employers are not subject to Fair Labor Standards Act); *Fry v. United States*, 421 U.S. 542, 95 S.Ct. 1792, 44 L.Ed.2d 363 (1975) (imposing federal wage and salary controls on state employees did not violate the Tenth Amendment); *Maryland v. Wirtz*, 392 U.S. 183, 88 S.Ct. 2017, 20 L.Ed.2d 1020 (1968) (state schools and hospitals are subject to Fair Labor Standards Act); *New York v. United States*, 326 U.S. 572, 66 S.Ct. 310, 90 L.Ed. 326 (1946) (nondiscriminatory federal excise tax on soft drinks applied to state selling of bottled mineral water).

The lower courts have correctly and consistently applied the *Garcia* analysis to uphold the constitutionality of the Bankruptcy Code. *See In re Crook*, 966 F.2d 539, 544 (10th Cir. 1992) (reduction of state's claim in Chapter 12 did not violate Tenth Amendment); *In re Hirsh-Franklin Enterprises, Inc.*, 63 Bankr. 864 (Bkrtcy. M.D. Ga. 1986), (subordination of city, county and state tax liens pursuant to §726 did not violate the Tenth Amendment even though it interfered with a state's ability to fulfill its governmental responsibilities); *In re Cropper Co., Inc.*, 63 Bankr. 874 (Bkrtcy. M.D. Ga. 1986) (subordination of local tax liens precluding payment of tax claim did not violate Tenth Amendment); *In re Kamstra*, 51 Bankr. 826 (Bkrtcy. W.D. Mich. 1985) (tax claim of city and county subordinated to administrative expenses under §724 was constitutional); *In re Stroud Wholesale, Inc.*, 37 Bankr. 735, *rev'd sub nom. on other grounds*, 47 Bankr. 999 (E.D. N.C. 1985) (similar to Kamstra).

## III.
## THE IMPAIRMENT OF THE COUNTY'S REAL PROPERTY TAX CLAIM RESULTING FROM THE PERMISSIBLE APPLICATION OF §506(b) IS RELATIVELY MINOR.

The factual circumstances of this case present even less of a concern about a state's sovereign right than any of the cases cited above. The County's property claim was neither subordinated nor voided—indeed, the claim was satisfied pursuant to the terms of a court-approved Chapter 11 plan which provided for payment of the full amount of the base tax and both prepetition and postpetition interest.

It is a necessary and fundamental aspect of the Bankruptcy Code that the claims be treated in a uniform manner. To achieve that purpose, the Code fixes the date of the filing of the petition to establish the amount of claims to be paid under a plan. 11 U.S.C. §502. In circumstances where, as here, the value of the property of the estate that secures a claim exceeds the amount of the claim, §506(b) of the Code permits the allowance of additional postpetition interest in all instances. Section 506(b) of the Code also permits the allowance of attorneys' fees, costs or charges, but only in those circumstances where, unlike here, they are authorized by a consensual, written agreement. 11 U.S.C. §506(b). Thus, where the claim for attorneys' fees, costs and charges are nonconsensual, such as here, the claim is disallowed under §506(b).

As recognized in the Sixth Circuit decision below, the disallowance of nonconsensual attorneys' fees, costs or charges is a relatively minor impairment to a state's sovereign power that is applied uniformly to private as well as public claims. Pet. App. 1a. The sovereignty of the

states to tax property has not been affected—it is the collection of a portion of the additions to the tax that is impaired. As the Sixth Circuit pointed out, §506(b) actually enhanced the allowance of additions to tax claims from the prior bankruptcy law by allowing states to collect postpetition interest. Pet. App. 18a.

## IV.
## THE COUNTY'S PETITION MISCHARACTERIZES THE APPLICATION OF THE PLAIN STATEMENT RULE IN THE DECISION BELOW.

The County's argument in its Petition that the Sixth Circuit treated the "plain statement rule as inapposite" mischaracterizes the decision below. Pet. 13. The Sixth Circuit stated that "[t]he County's argument that §506(b) does not evince a sufficiently clear congressional intent to encroach on the states' reserved powers is therefore inapposite." Pet. App. 18a. Thus, the Sixth Circuit's conclusion of "inapposite" was directed to the County's argument, and not to the rule itself. Instead, the Sixth Circuit clearly pointed out that the Bankruptcy Code provisions enacted in 1978, in fact, "*relaxes* the traditional presumption as to the states by allowing them to collect postpetition interest." Pet. App. 18a. This holding does not treat the "plain statement" rule as inapposite, but underscores the point that when Congress enacts legislation that actually relaxes a prior limitation on the states' taxing powers, it does not represent a congressional intent to invade the traditional domain reserved to the states. *See BFP v. Resolution Trust Co.*, 114 S.Ct. 1757, 1775, 128 L.Ed.2d 556 (1994); *Ron Pair Enterprises*, 489 U.S. at 240, 109 S.Ct. at 1029.

There is no ambiguity as to the application of §506(b) to local real property tax claims under the facts and cir-

cumstances of this case. It is beyond peradventure that the entire Bankruptcy Code was intended to apply to state real property tax claims. This is readily apparent from the House and Senate Reports to the Reform Act of 1978 in their discussion of the intended definition of a "claim" under 11 U.S.C. §101(5):

> By this broadest possible definition, and by the use of the term throughout title 11, especially in subchapter I of chapter 5, the bill contemplates that all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case. It permits the broadest possible relief in the bankruptcy court.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 309 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 21-22 (1978).

With the statutory intention being plainly clear, the constitutional issue should be analyzed in the manner that this Court set forth in *Garcia*. *See BFP v. Resolution Trust Co.*, 114 S.Ct. at 1778 n. 17; *Gregory v. Ashcroft*, 501 U.S. 452, 464, 111 S.Ct. 2395, 2403, 115 L.Ed.2d 410 (1991). The County has not argued or pointed to any supporting authority as to how it should prevail if this Court were to apply its holding in *Garcia* to the facts of this case—nor can it do so. Instead, the focus of the County's constitutional argument is that the "plain statement" rule precludes any analysis under *Garcia*. In so arguing, it is the County, itself, that has misapplied the "plain statement" rule, and thus the County fails to present any justification to compel this Court to grant the Petition.

## CONCLUSION

For the foregoing reasons, the Bondholder Committee prays that the Court deny Williamson County's Petition for a Writ of Certiorari.

Respectfully submitted,

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